Comments Regarding Draft Lobbying Disclosure Act Regulations For Submission to the Lobbying Disclosure Regulations Committee At Its Hearing To Be Held On August 2, 2007

Submitted By The Philadelphia Bar Association Task Force On Pennsylvania's Lobbying Disclosure Act[1]

Introduction

The Philadelphia Bar Association's Task Force on Pennsylvania's Lobbying Disclosure Act appreciates the opportunity to submit these comments on the draft regulations to implement the Lobbying Disclosure Act to the Lobbying Disclosure Regulations Committee (the "Committee"). These comments have been prepared in connection with the hearing to be held by the Lobbying Disclosure Act Committee and are based on the draft regulations (the "Draft Regulations") appearing on the Attorney General's web site (http://www.attorneygeneral.gov/theoffice.aspx?id=2099&campaignfinanceNav=|) on Friday, July 27, 2007.

1. General Comments.

A. Reference to the Act - Need for adoption of a short title.

(1) The Act and the Regulations will be viewed and used by thousands of non-attorneys and attorneys. For uniformity, ease of use and clarity, we recommend that the Committee adopt a short title for use in references to the Act in the regulatory process. We believe that the General Assembly has delegated more than sufficient authority to the Committee to adopt a short title in the Regulations.

(2) We recommend that the Committee adopt the title "The Lobbying Disclosure Act", as proposed in an earlier draft of the Regulations.

(3) We understand that Act 2006-134 does not have a short title and that formal reference under Pennsylvania Consolidated Statutes form is as set forth on page 3 of the Chapter 51 Proposed Regulations in the definition of "Act." ("Act. 65 Pa.C.S. §§ 1303-A - 1311-A (relating of lobbying disclosure)").

B. Reference to sections of the Act in the Regulations.

(1) The Draft Regulations refer to sections of the Lobbying Disclosure Act as, for example, "section 1304-A(b) and (c) of the act (relating to registration)." We

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[1] Submission of these comments on behalf of the Philadelphia Bar Association has been authorized by Jane Dalton, Esq., Chancellor of the Philadelphia Bar Association. Questions regarding these comments may be addressed to Lawrence J. Beaser, Esq., Chair, Philadelphia Bar Association Task Force On Pennsylvania's Lobbying Disclosure Act, c/o Blank Rome LLP, One Logan Square, Philadelphia, PA 19103. Phone: 215-569-5510; e-mail: beaser@blankrome.com.

believe that citation form is awkward and that the citation form would be much simplified by reference to the Pennsylvania Consolidated Statutes. Thus, in the example above, the reference would be to "65 Pa.C.S. § 1304-A(b) and (c) (relating to registration)."

(2) As time goes on, most attorneys will use the green "Purdons" volumes containing the Pennsylvania Consolidated Statutes. Adoption of this cross reference form would have the distinct advantage of referring attorneys to the specific section in the statute rather than requiring the reader to translate the Regulation's citation form into the Consolidated Statutes' format in order to easily find the cited section.

(3) Since the General Assembly has codified the Act, we recommend using the short form of citation permitted for citations to the Consolidated Statutes. See, 1 Pa.C.S. § 102 ("The Pennsylvania Consolidated Statutes may be cited by title and section number. Without prejudice to any other form of citation, a citation to any section of this act in the following form shall, except as provided in section 303 of this title (relating to cross references between provisions of the Consolidated Statutes), be adequate for all purposes: "1 Pa.C.S. § 102.").

C. **Suggestion to implement comments "A" and "B" above.**

(1) We recommend inserting in Chapter 51 a new Section 51.2 to be titled "51.2 Citation to the Act." The following sections would need to be renumbered.

(2) The new Section 51.2 would read as follows:

> 51.1. Short title and citation form. Without prejudice to any other form of citation:
> (A) The following forms of citation to the Act shall be adequate for all purposes:
> (1) "The Pennsylvania Lobbying Disclosure Act", which for all purposes shall be deemed to be the short title of the Act.
> (2) "The Pennsylvania Lobbying Disclosure Act, 65 Pa.C.S. §§ 1301-A - 1311-A"
> (3) "65 Pa.C.S. §§ 1301-A - 1311-A (relating to lobbying disclosure)"
> (B) Citation to specific sections of the Act should follow the form for citation of the Pennsylvania Consolidated Statutes set forth in 1 Pa.C.S. § 102. For example, 65 Pa.C.S. § 1301-A.

D. **Uniformity of phrasing.**

(1) We recommend that, before promulgation, the draft regulations be reviewed for consistence in words and phrasing.

(2) Example:

(a) For example, consider the following three examples of manner in which the draft regulations attempt to state that a list is not an exclusive list:

(1) Definition of "Anything of Value", Chapter 51, page 5: "The term is not limited to:"

(2) Definition of "Economic consideration, Chapter 51, page 9: "The term includes. . . ."

(3) Definition of "Entity", Chapter 51, page 10: "The term includes, but is not limited to, ..."

(b) **Suggestion:** We recommend using the phrase: "The term includes, but is not limited to, ..." uniformly throughout the regulations.

2. **Chapter 51. General Provisions (Draft of July 19, 2007) ("Ch. 51 Draft").**

A. **Comments on Section 51.1 (relating to definitions)**

(1) **Definition of "Amendment"** (Ch. 51 Draft, Page 5).

(a) **Issue.**

(1) We do not understand the wording of (i)(B) or (i)(C) that state "In the case of a lobbying firm, when engaging a new principal or lobbyist or when ceasing to engage a principal or lobbyist." and "In the case of a lobbyist, when engaging a new principal or lobbying firm or when ceasing to engage a principal or lobbying firm."

(2) The Act provides that a "lobbying firm" engages in lobbying "on behalf of a principal other than the entity itself. 65 Pa.C.S. §1303-A (definition of lobbying firm). Similarly, a "lobbyist" ". . .engages in lobbying on behalf of a principal for economic consideration. . . ." Id. (definition of lobbyist).

(3) Under these definitions, neither a lobbying firm nor a lobbyist "engages" a principal. Rather, both lobbying firms and lobbyists are engaged to lobby by principals.

(b) **Suggestions.**

(1) Revise (i)(B) to read: "In the case of a lobbying firm, when the lobbying firm is engaged by a new principal, when the lobbying firm engages a

new lobbyist, when the lobbying firm ceases to be engaged by a principal or when the lobbying firm ceases to engage a lobbyist."

(2) Revise (i)(C) to read: "In the case of a lobbyist, when the lobbyist is engaged by a new principal or new lobbying firm, or when the lobbyist ceases to be engaged by a principal or lobbying firm."

(2) **Definition of "Anything of value"** (Ch. 51 Draft, Page 5).

(a) Clause (ii) reads "(ii) The term is not limited to:"

(1) This implies, but does not state, that the "anything of value" includes the listed categories.

(2) **Suggestion:** We suggest this phrase be amended to read: "(ii) the term includes, but is not limited to:"

(b) Questions involving (ii)(E), "Services."

(1) If a lobbyist volunteers to work in an elected official's campaign for reelection, is the value of his/her time required to be reported? Consider the following examples:

(A) A lobbyist canvasses his/her neighborhood as a volunteer to help reelect an elected official?

(B) A lawyer, who is a lobbyist, volunteers to provide legal assistance to an elected official and his/her political campaign committee in order to help the official and his/her campaign committee comply with the Pennsylvania Election Code?

(3) **Definition of "Direct Communication"** (Ch. 51 Draft, Page 8).

(a) As we understand the Act, a choice must be made as to whether an activity is "direct communication" or "indirect communication." An activity cannot be both "direct communication" and "indirect communication."

(b) We believe that much time and trouble will be saved if the Draft Regulations are revised to include a statement to that effect.

(c) **Suggestion:** Insert a new clause (i) to read: "An effort that constitutes a direct communication can not also be indirect communication." The remainder of the number clauses should then be renumbered.

(4) **Definition of "Engaging in lobbying"** (Ch. 51 Draft, Page 10).

(a) The definition contains a cross reference to the definition of "lobbying" in the act when the term is defined in the regulations. In addition, the cross-references would appear more to be to the definitions of "legislative action" or "administrative action" rather than to the definition of "lobbying" and those terms are defined in the regulations.

(b) The Regulations to the extent possible should be self contained. If a cross-reference is being made to a term defined in the Regulations, no cross-reference should be made to the Act.

(c) In any event, since "lobbying" "legislative action" and "administrative action" are all defined in the Draft Regulations, we suggest deleting the cross-reference (*i.e.* ", as defined in the definition of "lobbying at section 1303-A of the Act."

(5) **Definition of "Gift"** (Ch. 51 Draft, Pages 10-11).

(a) Questions regarding what is included in the term "gift":[2]

(1) If a lobbyist volunteers to work in an elected officials campaign for reelection, is the value of his/her time a "gift" to the elected official? Consider the following examples:

(A) A lobbyist canvasses his/her neighborhood for as a volunteer to help reelect an elected official?

(B) A lawyer, who is a lobbyist, volunteers to assist the election campaign of an elected official comply with the Pennsylvania Election Code?

(b) What is the meaning of the phrase "except to the extent that such has a fair market value beyond the actual information contained therein" in clause (vii) of the definition of "Gift"?

(1) The full clause reads: "(vii) Information received by a legislator or other State official or employee within the scope of such office or employment, except to the extent that such has a fair market value beyond the actual information contained therein."

[2] Please note that these are the same questions raised with respect to the definition of "Anything of value."

(2) **Comment**: We do not understand what this phrase means. The phrase needs to be expanded and examples provided.

(6) **Definition of "Indirect Communication"** (Ch. 51 Draft, Page 12).

(a) As we understand the Act, a choice must be made as to whether an activity is "direct communication" or "indirect communication." An activity cannot be both "direct communication" and "indirect communication."

(b) We believe that much time and trouble will be saved if the Draft Regulations are revised to include a statement to that effect.

(c) **Suggestion:** Insert a new clause (i) to read: "An effort that constitutes a indirect communication can not also be direct communication." The remainder of the number clauses should then be renumbered.

(7) **Definition of "Marketplace transaction"** (Ch. 51 Draft, Page 15).

(a) The wording of the first clause (relating to "goods"), and particularly the phrase "which occurs in an arms-length transaction", is awkwardly worded and needs to be revised.

(b) The first clause currently states:

> "Goods--The usual and normal charge of goods in the market in which they would have been purchased at the time of the transaction, which occurs in an arms-length transaction."

(c) **Suggestion:** Is the following what was intended:

> "Goods--The usual and normal charge for goods, purchased in an arms-length transaction in the market in which they would have been purchased at the time of the transaction."

(8) **Definition of "Service (of official papers)"** (Ch. 51 Draft, Page 19).

(a) Making the date of service of official papers the date of mailing in the United States mail ignores the reality of mail delivery in 2007.

(b) At the least, service by mail should be deemed to have been made a number of days after mailing and service by an express carrier (if sent via overnight service) should be deemed to be made the next day.

3. Chapter 53 Registration and Termination

A. General Comments.

The public and the individuals and entities subject to the detailed requirements of this Act need bright-line standards as to when individuals and entities are required to register as principals, lobbyists and lobbying firms. This is particularly important since the Act includes in the definition of "lobbying" many activities that have never before been considered "lobbying" in Pennsylvania.

Many individuals, including small business owners, employees of small and large nonprofit and for profit corporations, attorneys, engineers, architects, accountants and doctors will become "lobbyists" for the first time in Pennsylvania's history as they become involved in dealing with changes in regulations and in Commonwealth procurement activities. Since individuals who fail to register face the possibility of criminal charges, the need for a bright-line test is critical.

We urge that each part of the Draft Regulations be reviewed from the perspective of these non-traditional "lobbyists" who are likely to fall into any "traps for the unwary" created by the Act and not clarified by the Draft Regulations. The benefit of having bright-line tests far outweighs the minimal chance of individuals gaming the system by not registering due to technical loopholes.

We are concerned that the Draft Regulations do not set forth clearly the type of bright-line tests for registration that will enhance compliance and avoid "traps for the unwary."

An example is the concept throughout Chapter 53 that "engaging a lobbyist for lobbying purposes," § 53.2(a)(1), and "accepting an engagement to lobby," §§ 53.3(a)(1) and 53.4(a)(1) by themselves require registration. We believe these provisions of the Draft Regulations are contrary to the letter and spirit of the Act, will be difficult to implement in the non-traditional lobbyist context and are the type of "trap for the unwary" that needs to be changed in the Draft Regulations.

To have "lobbying" there must be action taken to actually influence legislative action or administrative action. The Act's definition of "lobbying" begins by stating that it is "[a]n effort to influence legislative action or administrative action. . . ." Unless a step is taken to actually influence legislative action or administrative action there is no lobbying.

For direct communication, registration is not required unless there is some sort of actual contact (a communication) with a State official or employee, provided that the activity is not exempt from registration. Merely being retained as a lobbyist or lobbying

firm, without some action on the part of either the entity or individual doing the retaining or the individual or firm being retained does not satisfy the statutory definition of "lobbying."

> For indirect communication, there needs to be contact with a third party --- not just between the principal and the lobbyist. The definition of "indirect communication" includes the concept that some encouragement of "others" is necessary before an activity is "indirect communication."[3]

Thus, the mere act of retaining an individual to lobby is not and cannot, by itself, trigger registration. It is contact made by someone with a State official or employee (direct communication) or with a third party (indirect communication) where the purpose or foreseeable effect of which is to influence legislative action or administrative action that triggers registration, if the activity is not otherwise exempt).

Below are specific suggestions regarding Chapter 53 that we believe will help the Draft Regulations comply with the provisions of the Act and, hopefully, make the provisions of the Draft Regulations more user friendly.

B. **Section 53.2(a)(1) (principal registration); (Ch. 51, page 2) ("§ 53.2(a)(1)").**

(1) **Issue**.

(a) § 53.2(a)(1) provides:

"(1) Engaging a lobbyist for lobbying purposes constitutes acting in the capacity of a principal."

(b) This language is inconsistent with the definitions contained in the Act and will be misleading to individuals and entities considering whether they have to register.

(1) Under the Act, one does not technically retain a lobbyist. One retains an individual or entity to lobby on one's behalf. The individual or entity retained does not become a "lobbyist" until that individual or entity lobbies on behalf of a principal for economic consideration. 65 Pa.C.S. § 1303-A (definition of lobbyist).

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[3] "Indirect communication" is [a]n effort, whether written, oral or by any other medium, to encourage others. . .to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action. . . ." 65 Pa.C.S. § 1303-A (definition of "indirect communication")(emphasis added).

(2) An entity is not a principal until the entity itself engages in lobbying or until a lobbying firm or lobbyist engages in lobbying on its behalf. 65 Pa.C.S. § 1303-A (definition of principal).

(c) § 53.2(a)(1), however, requires an entity to register the moment it retains an individual to lobby on its behalf. As discussed above in the General Comment (¶ 3.A), the Act provides no basis for such a requirement.

(1) When an entity retains an individual to lobby on its behalf, that action indicates the intent, in the future, to influence legislative or administrative action.

(2) However, the retention of the lobbyist, by itself, is not an effort "directed to a State official or employee, the purpose or foreseeable effect of which is to influence legislative action or administration action" (direct communication) or "an effort. . .to encourage others. . .to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action" (indirect communication).

(d) We believe the language in § 53.2(a)(1) is too broad and goes beyond the plain language of the Act because it requires an individual to register even if no lobbying has occurred.

(e) Please consider the following example to illustrate our point:

(1) A small business retains a law firm to analyze a piece of legislation that is being considered by the General Assembly and to which the small business had no prior connection. The small business also indicates its intent that the lawyer will lobby on its behalf in the future. The small business pays the lawyer more than $2,500 in a one month period. The lawyer is a registered lobbyist for other clients; however, the lawyer has never represented the small business in any matter that would require registration under the Act. Prior to engaging the lawyer, the small business had never been involved in any way with "legislative action" or "administrative action" as defined in the Act.

(2) The lawyer reviews the legislation but does not contact anyone except the small business client with respect to the legislation. After the lawyer's review, the lawyer determines that the legislation may affect the small business in a positive way.

(3) The legislation is near final passage and, not wanting to spend more than it has to, the small business requests the lawyer to not contact members of the General Assembly or the Executive Branch.

(4) No lobbying has been done; however, under § 53.2(a)(1), the small business would appear to be required to register because it appeared to engage someone to lobby on its behalf.

(5) Until someone takes a step to interact with a government official, the statutory definition is not met, *i.e.,* no effort has been made that is "directed to a State official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action." The mere retention of the lawyer may be a necessary step if lobbying is to occur; but, by itself, is not lobbying as defined in the Act.

(2) **Suggestions**.

(a) Delete § 53.2(a)(1) as written.

(b) Substitute the following language for § 53.2(a)(1):

53.2(a)(1). An entity is not required to register as a principal until (a) someone lobbies on the entity's behalf or the entity engages in lobbying on its own behalf and (b) the person or activity is not exempt from registration.

(c) Please see additional suggested changes to § 53.2(a) discussed below at ¶ E below.

C. **Sections 53.3(a)(1) and 53.4(a)(1) ("§ 53.3(a)(1)" and "§ 53.4(a)(1)").**

(1) **Issue**.

(a) Sections 53.3(a)(1) and 53.4(a)(1) state that "accepting an engagement to lobby" constitutes acting in the capacity as a lobbying firm or lobbyist.

(b) This is the other side of the provision in § 53.2(a)(1), as discussed above, and requires an individual or entity to register as a lobbying firm or lobbyist the moment the individual or entity accepts an engagement to lobby.

(c) For the same reasons discussed above with respect to § 53.2(a)(1), the language of § 53.3(a)(1) and § 53.4(a)(1) does not comply with the Act and will generate confusion among individuals trying to comply with the Act's provisions. Under the plain language of the Act, the mere acceptance of an engagement to lobby does not mean that an individual (be it a lawyer, a corporate employee or a professional lobbyist) needs to register. Please see the discussion above in ¶ B.

(d) We believe the mere acceptance of an engagement is too broad and goes beyond the plain language of the Act because it requires an individual

to register as a lobbyist even if no actual attempt to influence legislation has been made. Please consider the following examples to illustrate our point.

(1) Please see the example in ¶ B above.

(2) Second example.

(A) Assume that the President of a company asks the Vice President to review an issue and prepare an outline of a proposal for legislation that the company may submit to a member of the General Assembly.

(B) If the Vice President engages in "lobbying" as defined in the Act, the Vice President will be a lobbyist. However, what if nothing ever comes out of the effort and no contact is ever made with a member of the General Assembly?

(C) Asking the Vice President to work internally, by itself, will never influence legislation. It is only when a government official is contacted that the effort becomes "lobbying." Under the facts presented here, the company never would have engaged in lobbying and the Vice President is not required to register as a lobbyist (and the company is not required to register as a principal).

(3) Third example:

(A) Assume that a lawyer is retained by a client to analyze or draft legislation. Further assume that the lawyer conducts his/her analysis or drafts language, which is never shared with anyone other than the client because the client decides not to pursue the matter.

(B) Under this scenario, the lawyer has done nothing other than write ideas on a piece of paper. Until someone takes a step to interact with a government official with respect to those ideas, the statutory definition of "lobbying" has not been met, *i.e.* no effort has been that is "*directed to a State official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action.*" The mere retention of the lawyer may have been a necessary step in lobbying; but it is not direct lobbying as defined in the Act.

(2) **Suggestion**.

(a) Delete Sections 53.3(a)(1) and 53.4(a)(1).

(b) No additional language is necessary as the required concept is contained in § 53.3(a)(2) ("Lobbying by a lobbying firm on a principal's behalf constitutes acting in the capacity of a lobbying firm.") and § 53.4(a)(2) ("Engaging in lobbying constitutes acting in the capacity of a lobbyist.").

D. **Section 53.1 (Biennial filing fee).**

(1) **Issue.**

(a) As an obvious accommodation to electronic filing and as a testimony to the understanding by the Committee that many, if not most, registrations will be done at the last minute, the Proposed Regulations permit the payment of the biennial filing fee "within 5 Commonwealth business days of the filing of a registration statement. . . ." § 53.1(1), Page 1.

(b) However, in the definition of "Service (of official papers)" (Ch. 51, Page 19), the Regulations permit service by the Commission "on the date of mailing, if delivered by United States mail."

(c) If the Committee thinks that is fair for papers to be considered delivered on the date of mailing by the Commission, the same rule should be effective for mailing the biennial filing fee.

(d) In addition to basic fairness, such a rule with respect to sending in the biennial filing fee (or for submitting the registration) would mean that small businesses and other entities would not have to go to the expense of using an express service to make certain the filing fees are paid on time.

(2) **Suggestion:** Amend Section 5.3.1(1) to read:

> (1) The biennial filing fee shall be tendered to the Department with the filing of the principal's lobbying firm's or lobbyist's first registration statement in each registration period. However, the filing fee shall be deemed to have been received by the Department, and the registration will not be considered delinquent, in compliance with § 5.1.5 (relating to delinquency) if, within 5 Commonwealth business days of the filing of a registration statement, the registrant mails the filing fee to the Department by United States mail, the filing fee is picked up by an express carrier for delivery to the Department, or the registration fee is hand-delivered to the Department.

E. **Section 53.2(a) (principal registration) (Ch. 53, pages 2--4).**

(1) Please see prior comments on § 53.2(a)(1) above. The intent of this comment is to combine those prior comments on the current version of § 53.2(a) with more comprehensive suggestions on the entire provision (*i.e.*, § 53.2(a)).

(2) **Issue:**

(a) Section 53.2(a) uses a phrase that is not defined in the definitions section, § 51.1, *i.e.,* "acting in any capacity as a principal." While the purpose of the language is clear, we think that the language of the provision should be revised so that the provision succinctly sets out the element of "acting in any capacity as a principal." Accordingly, our suggested changes incorporate these requirements in order to clarify the cross-reference.

(3) **Suggestion**. Revise 53.2(a) to read as follows:

> 53.2(a) Unless exempt under section 1306-A of the Act (relating to exemption from registration and reporting), an individual, association, corporation, partnership, business trust or other entity shall register with the Department within 10 days of acting in any capacity as a principal.
>
> (1) An individual, association, corporation, partnership, business trust or other entity is not required to register as a principal until (a) someone lobbies on its behalf or it engages in lobbying on its own behalf and (b) the individual, association, corporation, partnership, business trust or other entity or the activity is not exempt from registration.
>
> (2) Lobbying by a lobbyist on a lobbyist's own behalf requires that the lobbyist register as a principal.
>
> (3) A principal that is required to register and that also is lobbying solely on its own behalf need only register as a principal.
>
> (4) A principal acting as a lobbyist on behalf of others is required to register as a lobbyist under § 53.4 (relating to lobbyist registration).

F. **Section 53.3(a) (lobbying firm registration). (Ch. 53, page 4).**

(1) Please see prior comments on § 53.3(a)(1) above. The intent of this comment is to combine those prior comments on the current version of § 53.3(a)(1) with more comprehensive suggestions on the entire provision (*i.e.* § 53.2(a)).

(2) **Issue**. As with § 5.3.1(a), § 53.2(a) uses a phrase that is not defined in the definitions section, § 51.1, *i.e.,* "acting in any capacity as a principal." In this section also, while the purpose of the language is clear, we think that the language of the provision should be revised so that the provision succinctly sets out the element of "acting in any capacity as a principal." Accordingly, our suggested changes incorporate these requirements so that the cross-referencing is clearer.

(3) **Suggestion**. Revise 53.3(a) to read as follows:

53.3(a) Unless exempt under section 1306-A of the Act (relating to exemption from registration and reporting), an entity shall register with the Department within 10 days of acting in any capacity as a lobbying firm.

(1) Lobbying by an entity on a principal's behalf constitutes acting in the capacity of a lobbying firm.

(2) Lobbying by a lobbying firm on the lobbying firm's own behalf requires that the lobbying firm register as a principal.

(3) A lobbying firm that is required to register and that engages in lobbying on its own behalf shall also register with the Department as a principal.

(4) Unless exempt under 65 Pa.C.S. § 1306-A, members or employees of a lobbying firm who engage in lobbying on behalf of the lobbying firm shall register as lobbyists with the Department under § 53.4 (relating to lobbyist registration).

G. **Section 53.4(a) (lobbyist registration). (Ch. 53, pages 6-7).**

(1) Please see prior comments on § 53.4(a)(1) above. The intent of this comment is to combine those prior comments on the current version of § 53.4(a)(1) with more comprehensive suggestions on the entire provision (*i.e.* § 53.4(a)).

(2) **Issue**. Section 53.4(a) also creates a defined term that is not found in the definitions in Section 51.1 – "acting in any capacity as a lobbyist." While the purpose of the language is clear, we provide recommendations below to provide clarity to the language itself so it may achieve its purpose.

(3) **Suggestion.** Revise § 53.4(a) to read as follows:

53.3(a) Unless exempt under section 1306-A of the Act (relating to exemption from registration and reporting), an individual, association, corporation, partnership, business trust or other entity shall register with the Department within 10 days of acting in any capacity as a lobbyist.

(1) Engaging in lobbying constitutes acting in the capacity of a lobbyist.

(2) When a firm, association, corporation, partnership, business trust or business entity is engaged as a lobbyist or lobbying firm, it and each of its members or employees that engage in lobbying on behalf of a principal shall register with the Department unless exempt under 65 Pa.C.S. § 1306-A.

(3) When a lobbyist engages in lobbying on its own behalf, the lobbyist shall also register as a principal.

H. **Section 53.6(f). (Ch. 53 Draft, page 10.) ("§ 53.6(f)")**

(1) **§ 53.6(f) provides:**

"Lobbying may not occur after the filing of a notice of termination unless the lobbying is under a separate registration statement which has already been filed with the Department and which, at the time of the lobbying, has not been terminated."

(2) **Issue:**

(a) After termination, a lobbyist, lobbying firm or principal may, in the future, begin lobbying again.

(b) If the lobbying at that time is exempt from registration under 65 Pa.C.S. § 1306-A (exemption from registration and reporting), there is no reason under the Act why the lobbying cannot take place without a separate registration statement being filed.

(3) **Suggestion:** Insert the words "Unless exempt under 65 Pa.C.S. § 1306-A" at the beginning of § 53.6(f).

4. **Chapter 55. Reporting (Draft of July 16, 2007) ("Ch. 55 Draft")**

A. **Section 55.1 (relating to quarterly expense reports) ("§ 55.1")**

(1) **§ 55.1(a) and § 55.1(b)** (Ch 55 Draft, Pages 1-2).

(a) **Issue**.

(1) Inappropriate usage of the word "both."

(b) **Suggestions**.

(1) The word "both" should be deleted.

(2) § 55.1(a) should be revised to read:

"A quarterly expense report is required to be filed as set forth in this section when the total lobbying expenses for a registered principal, registered lobbying firm, or registered lobbyist lobbying on the principal's behalf together exceed $2,500 in a quarterly reporting period."

(3) § 55.1(b) should be revised to read:

"For a quarterly reporting period in which the total lobbying expenses of a registered principal, registered lobbying firm, or registered lobbyist lobbying on the principle's behalf together are $2,500 or less, a statement to that effect shall be filed with the Department by checking the appropriate block on the quarterly expense report form."

(2) **§55.1(c)** (Ch. 55 Draft, Page 2).

(a) **Issue**.

(1) For purposes of determining whether the reporting threshold has been met, what are reasonable methods that a filer may use to determine when assets and expenses are recognized?

(b) **Suggestion**.

(1) The Department moved the examples of "reasonable methods that a filer may use" to §55.2(a)(3). A cross-reference to the examples in § 55.2(a)(3) would be helpful.

(3) **§55.1(g)(2)** (relating to the general subject matter or issue being lobbied) (Ch. 55 Draft, Page 2).

(a) **Issue.**

(1) § 55.1(g)(2) contains examples of what need not be reported regarding the "general subject matter or issue being lobbied." The Draft Regulations, however, contain no suggestions of the types of disclosure the Committee thinks would be appropriate.

(2) It would be very helpful to have the Draft Regulations give some examples of the types of "general subject matter or issue" disclosure that the Committee thinks is appropriate. This would clarify the requirement and simplify the process of registering by eliminating possible confusion as to what is to be disclosed. Moreover, examples would lead to more uniform reporting by registrants.

(b) **Suggestion.** The Draft Regulations should be revised to give 3 or 4 examples of the types of "general subject matter or issue" disclosure that should be made.

(4) **§ 55.1(h)** (Ch. 55 Draft, Page 4).

(a) **Issue.**

(1) § 55.1(h) currently provides:

"A registered principal that attempts or that retains a lobbying or lobbying firm or lobbyist to attempt to influence an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included in calculating the totals referenced by subsection (g)(3)."

(2) This provision is unclear and confusing. We do not understand what the words "the related expenses" means. Although the language used in § 55.1(h) replicates the language of the Act (see 65 Pa.C.S. §1305-A (b)(7)), this provision in the regulations should be redrafted to clarify what the registered principal is doing. We urge that at least one example be provided in the Draft Regulations.

(b) **Suggestion**.

(1) § 55.1(h) should be revised to read:

"A registered principal that attempts (or retains a lobbying firm or lobbyist to attempt) to influence an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included in calculating the totals referenced by subsection (g)(3)."

(5) **§ 55.1(m) (signatures on quarterly expense reports).**

(a) **Issue:**

(1) It has been brought to our attention that there is significant confusion regarding who is required to sign the quarterly expense reports. The current draft of § 55.1(m) is confusing and additional explanation would be helpful.

(2) Consider the following questions:

(A) Must employees of principals, where such employees are registered as lobbyists, sign the quarterly expense reports of their employer/principal?

(B) If the employees of a principal are exempt from registration (*e.g.,* because they have not spent more than 20 hours lobbying), we assume that such individuals do not have to sign the quarterly expense reports of their employer/principal. Is that correct?

(3) **Recommendation:**

(A) § 55.1(m) should be expanded to answer the above questions and clarify which individuals must sign the quarterly expense reports and under what circumstances.

(6) **§ 55.1(o).** Ch 55 Draft, Page 10 ("§ 55.1(o)").

(a) Section 55.1(o) carries forward into the Draft Regulations the provision in the Act requiring attribution of the name of the person who made or financed the indirect communication.

(b) **Issue:** The subject matter of § 55.1(o) has nothing to do with the subject of Chapter 55, which is about reporting.

(c) **Suggestion:** The contents of § 55.1(o) should be transferred to Chapter 51 (general provisions).

B. **Section 55.2** (relating to records maintenance, retention and availability)

(1) **§ 55.2(b)(1).** (Ch. 55 Draft, Page 12).

(a) § 55.2(b)(1) provides:

"(1) Records that integrate both lobbying and nonlobbying activities shall be retained and made available for inspection or audit under this section and Chapter 61 (relating to compliance audits)."

(b) **Issue:**

(1) Certain records maintained by attorneys (such as an attorney's time sheets) of necessity may contain time entries relevant to lobbying and, on the same time sheet, time entries showing matters that are privileged under applicable law and that an attorney may not disclose.

(c) **Suggestion:** A sentence should be added to § 55.2(b)(1) to state as follows:

"Nothing in this section shall be construed to require an attorney to disclose any privileged matter or record that is not germane to the Act."[4]

(2) **§ 55.2(b)(3)** (Ch. 55 Draft, Page 12).

(a) **Issue**.

(1) The wording of § 55.2(b)(3) is confusing.

(2) This section provides examples of "viable options," which may mislead registrants into believing that they are using specific methods of estimation and allocation approved by the Committee when, in fact, these "viable options" are merely suggestions that the Committee has thus far not evaluated.

(b) **Suggestion**.

(1) As there is no specific method for valuing time required by the Act, a specific method should be established and set out in § 55.2(b)(3).

(2) Alternatively, § 55.2(b)(3) could simply state: "A registrant may value time spent lobbying using any reasonable method of estimation and allocation."

[4] **Drafting Question For the Task Force: Can this formulation be improved. Are there other concerns about this provision that should be addressed?**

(3) **§55.2(c)(2)** (Ch. 55 Draft, Page 13).

(a) **Issue**.

(1) The wording of §55.2(c)(2) is confusing.

(b) **Suggestion**.

(1) Revise §55.2(c)(2) to read:

"Original source records received by the registrant shall be retained in their original form, unless such records are lost, stolen or destroyed through no fault of the registrant, or are otherwise unavailable, and cannot be recreated from other sources."

(4) **§55.2(c)(2)** (Ch. 55 Draft)

5. **Chapter 57 (Exemption from Registration and Reporting)** (Ch. 57 Draft).

A. Section 57.1(a) (Ch. 57 Draft, page 1).

(1) **Issue**. This section begins with the phrase "Unless specified in § 57.2 (relating to qualifications for exemption). . . ." This phrase appears to be superfluous and is confusing.

(2) **Suggestion**. If this phrase is superfluous, it should be deleted. If the phrase is not superfluous, then clarification is needed.